

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE D. DANIELS,

Defendant-Appellant.

UNPUBLISHED

September 27, 2005

No. 255728

Wayne Circuit Court

LC No. 04-000759-01

Before: Hood, P.J., and White and O'Connell, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316(1)(a), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent prison terms of life without parole for the first-degree murder conviction and two to five years for the felon in possession conviction, and to a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant was convicted of fatally shooting twenty-year-old Duran Farris outside a gas station in Detroit. At the time of the shooting, Farris was sitting in a car talking with his friends, Dwan Freeman and Shannon Smith. Defendant and Freeman each had a child with a woman named LaToya Rogers, and Freeman and Farris once had a physical altercation with defendant when he arrived at Freeman's mother's house to pick up Freeman's child for Rogers. When Freeman observed defendant approaching, he warned the victim to get out of his car and go into the gas station for safety. Freeman then immediately went inside the gas station. As he was doing so, he heard two shots, turned around, and observed defendant standing over the victim, who was on the ground outside his vehicle. Freeman saw defendant fire a shot down at the victim. Defendant then shot toward the gas station before fleeing.

Shannon Smith, the second eyewitness, testified that he observed defendant remove a .45 caliber Colt weapon from his waist area. Smith then ran into the gas station. Smith testified that he heard six or seven shots and believed that defendant emptied his weapon before running away. Several of the shots were fired at the victim, but two were fired at the door of the gas station. Smith chased defendant as he fled. Smith failed to catch defendant, but caught up with defendant's girlfriend who had been walking with defendant. He brought the woman, identified as Tiffany Stevens, back to the gas station. At the scene, Stevens told the police that she saw

defendant run toward the gas station brandishing a hand gun and shoot at the victim at least twice. She provided a brief description of defendant and his address.

A third eyewitness could not identify defendant, but was at the gas station talking on his cellular telephone. He confirmed that the victim was in his car and that others were standing around the car before the first shots were fired.

Defendant first argues that he was denied his right to a fair trial and his right of confrontation by the prosecution's last-minute addition of Smith to its witness list. We disagree. We review for abuse of discretion the trial court's decision to allow the prosecution to amend its witness list. *People v Burwick*, 450 Mich 281, 291; 537 NW2d 813 (1995).

The prosecution may amend its witness list "at any time upon leave of the court and for good cause shown" MCL 767.40a(4). "Good cause" may be found by the fact of late discovery of a res gestae witness. *People v Gadomski*, 232 Mich App 24, 37; 592 NW2d 75 (1998). In this case, Freeman testified at the preliminary examination that a person named "Shannon" was present at the time of the shooting. Freeman did not know Shannon's last name, and Shannon was never identified until the first day of trial when the victim's family brought Shannon Smith to the prosecutor's office. The prosecutor immediately moved to amend her witness list. Because Smith's identity was unknown until trial began, good cause was shown for his late addition to the witness list. *Id.* Furthermore, there was no resultant prejudice from the late amendment. When the prosecutor moved to amend, no testimony had been taken and defendant had not yet committed to any particular defense before the jury which may have been compromised by Smith's testimony. From Freeman's preliminary examination testimony, defendant knew that a person named "Shannon" was an alleged eyewitness, but he never requested the prosecutor's assistance in identifying and locating "Shannon" before trial. MCL 767.40a(5). Finally, the trial court permitted defendant to interview Smith before he testified at trial. Under the circumstances, the trial court did not abuse its discretion by permitting the late amendment. Defendant has failed to explain or rationalize his other arguments on this issue or cite supporting authority for them, so he has abandoned them. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

Defendant next argues that he was denied his right to confront witnesses when the trial court limited the time and subject matter of his cross-examination of witness Freeman. Specifically, defendant complains that the trial court improperly limited his ability to cross-examine Freeman about his prior statements and about his identification of defendant as the shooter. A trial court's decision to limit cross-examination is reviewed for an abuse of discretion. *People v Sexton*, 250 Mich App 211, 221; 646 NW2d 875 (2002). "Neither the Sixth Amendment's Confrontation Clause nor due process confers on a defendant an unlimited right to cross-examine on any subject." *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992). Defendants are, however, guaranteed a reasonable opportunity to test the truth of a witness' testimony. *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993).

In this case, the trial court afforded defendant a reasonable opportunity to cross-examine Freeman with respect to his prior police statement and his preliminary examination testimony. Defendant was able to test the veracity of Freeman's testimony. The trial court's only limitation was on defense counsel's repetitive and potentially confusing questions in a few areas, including Freeman's recollection of the shooting sequence, the identification of the gun, the victim's

position when shot, and Freeman's relationship with defendant. The trial court did not abuse its discretion in limiting defendant's time with respect to issues that were already covered. Additionally, the record does not support defendant's assertion that he was precluded from adequately questioning Freeman about defendant's identity as the shooter.

Defendant next argues that trial counsel was ineffective for agreeing to stipulate that he was previously convicted of larceny from a motor vehicle and larceny from a building, and for failing to object to evidence of flight. To establish a claim of ineffective assistance of counsel, a defendant must overcome the presumption that the challenged action might be considered sound trial strategy, and decisions regarding what evidence to present is presumed to be trial strategy. *People v Dixon*, 263 Mich App 393, 396, 398; 688 NW2d 308 (2004). Here, defendant has failed to overcome the presumption that trial counsel strategically placed the nonviolent crimes before the jury rather than allow it to speculate about the nature of the underlying felonies. Regarding evidence of flight, defense counsel is not required to make frivolous or meritless objections, *People v Torres*, 222 Mich App 411, 425; 564 NW2d 149 (1997), and the evidence of flight was admissible in this case to support an inference that defendant knew he was guilty. *People v Goodin*, 257 Mich App 425, 432; 668 NW2d 392 (2003).

Finally, defendant argues that the admission of Stevens' statements at trial violated the Confrontation Clause, US Const, Am VI, and that those statements were improperly admitted under MRE 803(2), the excited utterance exception to the hearsay rules. Defendant relies on *Crawford v Washington*, 541 US 36, 68; 124 S Ct 1354; 158 L Ed 2d 177 (2004), in which the United States Supreme Court held that "testimonial statements" are inadmissible at trial unless the witness who made the statements is unavailable and there was a prior opportunity for cross-examination of the witness. We need not discuss the technical constitutional or evidentiary questions defendant raises, however, because the trial court's admission of this evidence was harmless beyond a reasonable doubt. *People v Shepherd*, 472 Mich 343, 347-348 n 4; 697 NW2d 144 (2005); MRE 103(a). In this case, any error in the admission of Stevens' statements identifying defendant as the shooter was harmless beyond a reasonable doubt. The prosecution linked Stevens to defendant through her mother, who testified that defendant and Stevens were dating at the time of the shooting and that police brought Stevens home on the day of the shooting after questioning her.

Likewise, Smith and Freeman, who both knew defendant, identified him as the shooter and described Stevens as the woman who was accompanying defendant moments before the shooting. Smith and Freeman witnessed the crime, accompanied the victim immediately before the shooting, saw defendant approach, and testified in detail about the shooting. While there were discrepancies in the witnesses' testimony with respect to some details, there was no discrepancy concerning the identity of the shooter. A third eyewitness, who could not identify defendant, also verified the circumstances of the shooting. The prosecutor introduced evidence of defendant's motive, specifically the prior physical altercation between defendant, the victim, and Freeman, and there was evidence of defendant's flight after the crime. He went to another jurisdiction, did not provide his family with information on his location, and used an alias and fictitious date of birth when apprehended. The evidence against defendant was overwhelming, even without Stevens' statements to police. Because the jury would have reached the same result without Stevens' statements, any error in admitting them into evidence was harmless beyond a reasonable doubt. *Shepherd, supra*; MRE 103(a).

Affirmed.

/s/ Karen Fort Hood

/s/ Helene N. White

/s/ Peter D. O'Connell